

EXHIBIT A

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BIRCH TELECOM'S COMPLAINT OF END USER SERVICE DISRUPTION AND PETITION TO OPEN INVESTIGATION INTO SWBT STRUCTURAL SEPARATION

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I. INTRODUCTION

SBC Communications Inc.'s current media campaign conveys its corporate position on competition very clearly. The "We Have/They Have" SBC television media blitz denigrates competing local service providers as "middlemen" who have only "access" to "our lines – our networks," echoing earlier messages promising to maintain a monopolistic hold on the facilities Texas rate payers have funded circuit by circuit.¹ In addition to calling into question the technical expertise of competing providers (e.g. "Not everyone selling phone service is what you would call a phone company"), SBC has seized opportunities to shake consumer confidence in the stability of other providers, touting its financial strength and widely publicizing its readiness to step in and provide continuity of service when its competitors falter.²

While differentiating itself in ad campaigns as financially superior, SBC in the same breadth bemoans its claimed loss of revenue and blames job cuts on "unrealistic and outmoded regulatory policy" and "deep discounts that are simply pocketed by

¹ Before passage of the 1996 Act, SBC stated that "we want to make our welcome mat smaller than anyone else's." Burrows, "Pick of the Litter: Why SBC is the Baby Bell to Beat," Business Week at 72 (March 6, 1996).

competitors.”³ “[W]e now subsidize competitors who in turn siphon revenues out of the market, ” according to SBC Chairman and CEO Ed Whitacre, who continues to deliver anti-UNE-Platform and anticompetition sentiments.⁴

Southwestern Bell Telephone Company (“SWBT”) employees, wholesale and retail alike, cannot help but hear, internalize, and act in furtherance of SBC’s mantra that the enemy is competition and competitors.

- When the CEO of a Fortune 50 company attributes an 11,000 person layoff to companies like Birch Telecom of Texas, LLP (“Birch”), it is unrealistic to believe that the wholesale division of SWBT dedicates itself enthusiastically or even dispassionately to Birch’s service and provisioning needs.⁵
- When SBC commercials refer to competing providers as “parasites” and accuse them of “contributing nothing to the survival of its host,” “giv[ing] nothing back and invest[ing] nothing,” and “suck[ing] the networks dry,” it is clear that SBC’s pledges to regulators to treat CLECs as “valued customers” are devoid of value.
- When its top management explicitly attributes SBC’s claimed decline in growth to activities supported by its wholesale group, it is improbable that the individuals who comprise that group can encourage and recognize “success” in serving competing providers.

Instead, and as Birch has experienced first hand, the effectiveness of the SWBT wholesale organization has declined, providing not even the pretense of effective cooperation, responsiveness, and internal advocacy. Birch believes that this shift has

² See, e.g., SBC Media Alert, “SBC Ready to Assist Businesses, Consumers Concerned about Provider Stability”, Aug. 8, 2002; SBC Press Release, “Who We Are: Shows Clear Difference Between SBC and Competitors, May 13, 2002.

³ SBC Press Release, “SBC to Cut 11,000 Jobs and Investment Due to Outmoded Regulatory Scheme and Weak Economy,” Sept. 26, 2002.

⁴ *Id.*

⁵ Several days before announcing the layoff of 11,000 employees, SBC’s Chief Financial Officer reportedly made the following statement at the Banc of America Securities Conference (Sept. 23, 2002): “This year we will throw off three billion of cash flow after dividends. The real question is how do we use that cash?”

occurred not coincidentally, but as a direct consequence of SBC's transition from a pre-271 to a post-271 environment.

II. STRUCTURAL SEPARATION: THE TIME HAS COME

Now more than ever, in light of the conflict that clearly exists between SWBT's role as supplier and competitor, the structural separation of SWBT's retail and wholesale local service operations is essential to support competitive growth in the local service market. Birch therefore petitions the Commission to open an investigation into the need for and benefits of structural separation between SWBT's retail and wholesale organizations. Any expectation that SWBT could on its own create effective, internally-enforced incentives to promote competition against itself was overly optimistic. As SBC's media campaign confirms, progress has gone in the opposite direction, undermining any realistic expectation that SWBT's wholesale organization is motivated to support CLECs. In reality and not surprisingly, SWBT (and other ILECs) lack the necessary incentive and the underlying inclination to open their local markets to competition.

Its desire to gain access to the interLATA market in Texas and in other states motivated SWBT to create processes within its wholesale organization to rely upon in support of its applications. These changes occurred as a result of strong messages delivered by this Commission, which accurately observed as early as May 1998 that "Southwestern Bell has been a reluctant participant in opening the local telecommunications market to competitors."⁶ As a result, the Commission called for SWBT "to come up with concrete steps for changing the corporate culture to treat CLECs

⁶ Texas PUC Open Meeting, May 21, 1998, p. 195 (Commissioner Walsh).

as valued customers. Any such change must be embraced from the top of the organization, acted upon and communicated downward throughout the entire organization to account representatives, repairmen and employees at the LSC [Local Service Center].”⁷

Actual delivery of wholesale support to CLECs of equal quality to the support available to SWBT’s retail operation, however, has not materialized. As the Commission noted, “no matter what safeguards and protective measures we recommend we cannot be assured that competition will become irreversible in Texas until Bell is committed to treat CLECs as customers rather than competitors. This change in business attitude is entirely within Bell’s power. This Commission cannot order Bell to change its attitude.”⁸ While the Commission may not be able to mandate a change in corporate attitude, it can attempt to level the playing field necessary to support local competition. That level playing field cannot be achieved until both CLEC and SWBT retail operations are dependent upon services and facilities delivered at arm’s length through a structurally separate SWBT wholesale organization.

In support of its Petition, Birch outlines the following specific Complaint of End User Service Disruption which serves as a classic case study identifying the critical need for structural separation and highlighting the immediate risks presented by today’s lack of separation.

⁷ *Id.*

⁸ *Id.* at 207-08 (Commissioner Curan).

III. COMPLAINT

In late December 2001, intending to convert a single Birch end user to SWBT local service, an SWBT retail service representative instead generated a provisioning order to discontinue service to more than 75 unsuspecting Birch business customers. The resultant service disruptions were without warning and without authorization, with SWBT having nothing more than the consent of one Birch end user indicating its intention to migrate to SWBT service. As a result of what is described as a single incorrect keystroke, SWBT's systems returned and auto-populated on an internally-generated SWBT retail provisioning order the circuit IDs belonging to every Birch end user within an entire geographically-defined area. Between January and June 2002, Birch engaged in informal discussions with SWBT to ascertain the root cause analysis of this incident, which unfortunately resulted in more questions than answers. Birch purposely engaged in these discussions not only to gain a better understanding of how more than 75 of its accounts were disconnected by SWBT retail, but also to gain a level of comfort that the cause of this occurrence had been redressed by SWBT. To the latter, Birch remains unconvinced that SWBT's alleged system fix addresses the overarching impact this incident implies: SWBT retail has unfettered access to wholesale customer account information and the ability to create service orders impacting CLEC and user service.⁹

According to SWBT, a service representative in its retail organization inadvertently entered "CLS" instead of "CLT" as the circuit type identifier¹⁰ when

⁹ Any further effort to resolve Birch's complaint informally is excused pursuant to P.U.C. Subst. R. § 22.242 (c)(1)(c), because Birch alleges that SWBT has engaged in anticompetitive practices.

¹⁰ Both "CLS" and "CLT" are proper circuit type identifiers, each using a unique circuit identification format. CLS circuits are identified with a serial number format ID, while CLT circuits are identified with a telephone number format ID. CLT is the type of circuit indicator on a UNE-P account.

accessing CABS menus in SORD to process a retail service request for the end user conversion. This single data entry error caused SWBT systems to return circuit information on all Birch end users within the ASG geographic subdivision of the specified Birch Billing Account Number (BAN), which data was then automatically populated on a “C” CABS order and released for completion.

The error occurred even though the SWBT retail representative reportedly had input the correct telephone number-based circuit identification number for the intended end user. The error occurred even though the SWBT retail representative had in hand the intended end user’s listed name, listed address, service address, directory information, billing name and address, billing cycle, TAR (tax area), tax exemption information, circuit number, and SIC (standard industry code) – a collection of information none of which matched any but one of the 75-plus end user accounts included on the “C” disconnect order. The error occurred even though the intended end user had completed a Letter of Authorization which detailed the billing telephone number and all associated telephone numbers that were to be migrated.

The error occurred even though the SWBT retail representative recognized as “unusual” the appearance of additional circuit IDs in response to entry of the circuit ID data of a single end user. In fact, because the return of the additional circuit data other than that contained on the service request was unusual, the SWBT retail service representative processing the order contacted the agent acting on behalf of the end user. (Because SWBT indicates that it had received a Letter of Authorization authorizing the migration of the single end user, Birch assumes that the authorized agent contacted in this instance was a SWBT retail sales representative, but the individual has not been

identified.) In response to the inquiry as to what to do with the additional circuits retrieved, the SWBT service representative processing the migration was instructed to disconnect all of the circuits. No attempt was made to cross-check with the individual end users or with Birch as to whether the disconnections were in fact authorized.

SWBT used the CABS (pre-order) feature of SORD, as well as a CABSC order menu in CABS MINIMAL to create a single “C” change order to disconnect service on circuit ID numbers within the Birch BAN. The possibility that SORD would return an entire collection of unrelated circuitry data in response to a mismatch between the circuit type identifier and a single end user circuit ID is not documented in SBC technical publications. SWBT claims to have been unaware of this feature until this episode was reported. SWBT also claims to have now implemented a system fix to cause the return of an error message should the same data entry error reoccur. The fix has not been verified and the fact that SWBT apparently was unaware that its legacy system would respond to the keystroke error with a “wild card” reaction creates little comfort that the problem is isolated or resolved. SWBT’s assurance that service representatives now have been instructed to immediately alert their supervisor in the event of any unusual displays or system responses suggests that SWBT is not convinced that other such quirks do not exist which may similarly produce unintended presentations of CLEC wholesale data to SWBT retail order processors.

Beyond the possibility that SWBT might retrieve CLEC end user data by mistake, the unacceptable reality is that SWBT’s retail organization has ready access to retrieve wholesale data at will. On-line technical publications confirm that SWBT retail representatives can easily retrieve CLEC end user data not just inadvertently, but

intentionally and purposefully through CABS menus in SORD. By simply inserting the BAN in the TN field of CABS (SORD's pre-order capability), for example, along with a circuit type identifier, the SWBT retail representative can retrieve all CLEC end user customer data within that BAN with the corresponding circuit type identifier (e.g. all UNE-P accounts for Birch within a geographic area). This fact directly contradicts SWBT's position that under normal circumstances, a representative processing a conversion order only has access to information about the circuit(s) being converted or disconnected.

However the SWBT retail service representatives may *choose to* proceed, the indisputable fact is that they have *ready and unrestrained access to* databases from which they can retrieve at least an entire BAN's worth of end user data at a time for any given CLEC. No restrictions have been disclosed requiring SWBT's retail order processors to positively indicate customer authorization for the individual end user accounts within that CLEC's BAN before accessing the information on, or before generating service orders impacting, those accounts. SWBT represents that it had received a Letter of Authorization from the single intended end user, but obviously the number of circuits together with the number of end user accounts impacted do not correlate to the information reportedly contained on the single end user authorization.

The above-described misuse of CLEC end user data resulting in service interruption to Birch customers was not an isolated event. In May 2002, for example, Birch received a No Dial Tone trouble report from an apartment complex clubhouse and leasing offices. In the process of resolving the trouble, Birch learned that SWBT had disconnected its customer's service in error and had used the existing Birch customer's

network facilities to turn up new service for an apartment tenant who had ordered SWBT service. Although records showed that there was working service at the address used to process the disconnect, SWBT retail mistakenly made the determination that the existing service must have been abandoned. Because the Birch customer's facilities were used for the new SWBT end user and because the lines impacted had hunting capability, restoration of service was complicated. The Birch customer's service was not fully restored for more than seven days.

Had SWBT retail been required to process the new service request through a structurally separate wholesale entity, more effective processes would have been in place to prevent the accessing and misuse of a CLEC's existing end user data on a new SWBT retail service installation. From a provisioning perspective, a separate intermediary observing that a competitor was the local service provider of existing service at the address where new service is requested hopefully would do more than assume that the service had been abandoned.

Birch's Complaint establishes at least the following facts:

1. Assumptions that the Commission was encouraged to make in Project 16251 (Investigation into SWBT's InterLATA Application) regarding the sharing of information between SWBT's wholesale and retail operations have proved to be factually inaccurate. For example, the finding that "SWBT's retail operation does not have access to records of customers that are served by CLECs," is demonstrably incorrect.¹¹ In fact, SWBT's retail operation has open and unfettered access to wholesale data, including Carrier Proprietary Information (CPI) on CLEC end user accounts. The complete

¹¹ Final Staff Report on Collaborative Process, Project No. 16251, Summary of SWBT's Proposal in response to Commission Public Interest Recommendation No. 15, p. 24 (11/18/98).

absence of a “firewall” between SWBT’s retail organization and the data of CLEC end users created the conditions allowing the error and service disruption to occur.

2. No effective procedures exist to prevent SWBT’s retail operation from accessing CLEC end user data to improperly process orders on accounts for which SWBT is not the service provider. Regardless of whether SWBT requests customer consent to use CPNI as part of a customer service representative’s contact flow with a customer when the customer first initiates service, the process does not prevent SWBT’s retail operation from accessing and acting on CLEC end user accounts without customer consent.

3. While safeguards are in place to prevent a CLEC from initiating subsequent provisioning service requests on existing accounts for which the CLEC is not the current service provider, no comparable safeguards exist within SWBT’s retail operation. For example, a CLEC cannot, nor should it be able to, submit a disconnect order on an account for which it is not identified as the service provider. SWBT’s retail operation, in contrast, can and did generate disconnect orders on more than 75 end user accounts even though Birch, not SWBT, was the identified service provider on each account.

4. SWBT retail representatives processing orders on CLEC end user accounts improperly rely upon one-sided contact with SWBT retail sales personnel to verify the accuracy of order processing. In the Complaint outlined, SWBT’s retail representative received and acted in reliance upon assurances from sales personnel that circuits associated with more than 75 end user accounts were instead all related to a single customer requesting migration of its service.

IV. BROADER ISSUES SUPPORTING STRUCTURAL SEPARATION

While the disconnect orders that are the subject of Birch's Complaint resulted from a reported system error combined with poor processes and aggravated by inadequate safeguards, investigation of the occurrence reveals a far more endemic and pervasive problem. The risk of unintended and unauthorized account activity negatively impacting CLEC customers exists by virtue of: (1) the lack of an effective firewall between SWBT's retail organization and the customer records of CLEC end users, (2) the absence of a customer authorization protocol that is meaningfully linked to SWBT preorder retrieval and service order generation, and (3) the demonstrated willingness of SWBT retail service order processors to rely on retail sales agent assurances to the detriment of CLECs and their end users.

Each of these problems, as well as critical issues identified in other Commission dockets,¹² and in other recent proceedings,¹³ can be positively addressed by the institution of structural separation. The separation Birch advocates would require that SWBT retail and CLECs work through the same intermediary organization, on the same terms, and under the same conditions, with the reduced risk of either inadvertent mishandling or intentional anticompetitive activity.

¹² See, e.g., Project No. 24948, Investigation of Winback/Retention Offers by Chapter 58 Electing Companies and Project No. 22490, Review of P.U.C. Subst. R. 26.122 Regarding Customer Proprietary Network Information.

¹³ A recent lawsuit filed by a former SWBT employee alleges that while working at the Dallas Local Service Center responsible for handling order for CLECs, SWBT employees were "regularly requested to make false record with respect to the timeliness of Defendant's response to orders by CLECs," in order "to appear to be more responsive to CLEC service orders than it was actually being and to avoid paying liquidated damages. . ." *Davis. v. SBC Communications, Inc.*, Cause No. 02-6951, Dallas County, 191st Judicial District, Plaintiff's Original Petition, pp. 3-4. The lawsuit also alleges that the SWBT LSC management communicated that it was in SWBT's interest "that competition in the local exchange and long distance business be limited." *Id.* at 4.

In connection with Birch's specific Complaint Regarding End User Service Disruption, SWBT has been unwilling to provide any substantiation of training or retraining to prevent its retail personnel from gaining unauthorized access to CLEC end user account records, asserting that any such training materials and related documents are proprietary. Similarly, although the end users impacted were Birch customers, SWBT has not responded to Birch's request to review the internal posted service orders which accomplished the unauthorized interruptions of service, claiming again that the data is proprietary.

SWBT's unwillingness to share the requested information in furtherance of an investigation of Birch's Complaint is unjustified. But, training and retraining, and even post-mortem reviews, will never be as effective as structural separation in curing the proven ambivalence of a single entity torn between its loyalty to its own interests and its statutory obligations to serve its competitors. Indeed, SWBT's media campaign to publicly disparage competition and competitors like Birch in particular, serves only to raise questions of loyalty in every SWBT employee who is tasked with meeting the needs of wholesale customers. Only structural separation will be effective in curing the conflict of interest between SWBT as competitor and SWBT as wholesale provider.

Lost service can be restored, but a customer's confidence is more difficult, if not impossible, to recover. Every unpleasant experience a customer has in a nascent competitive market, regardless of how explained, and regardless of whether intentional or not, counts against customer willingness to turn to competition again or to speak well of the experience. Instituting structural separation is necessary to reduce the risk of

backsliding and discrimination, and to ensure that the still elusive goals of the Telecommunications Act of 1996 may be achieved.

V. CONCLUSION

Birch respectfully requests that the Commission open an investigation to explore the necessity for and the benefits of requiring a structural separation between SWBT's retail and wholesale local service organizations. Undertaking such an investigation would be consistent with efforts initiated by other state regulators and legislatures which have in the last 24 months considered the issue of Regional Bell Operating Companies' structural separation.

In furtherance of the Commission's investigation into structural separation, Birch proposes as follows:

- (1) that all interested parties be invited to participate in the proceeding and to provide input into the proposed scope of a Commission investigation into structural separation,
- (2) that the facts underlying Birch's specific complaint regarding disruption of service on its end user accounts be used to promote a better understanding of the interfaces and databases through which CLEC end user account information is available to SWBT's retail organization, with the understanding that restricting improper access to data is only one of the benefits to be achieved through structural separation of SWBT's retail and wholesale operations,
- (3) that interested parties be invited to propose data requests for the Commission to serve on SWBT, with responses to be shared with

proceeding participants in advance of scheduled hearings, and that SWBT subject matter experts and fact witnesses be available for on-the-record examination at such hearings,

- (4) that interested parties be invited to submit draft Codes of Conduct to govern the proposed SWBT wholesale and retail companies, and to govern in the interim before any such separation can be achieved; and
- (5) that the progress of the proposed investigation be reported in and coordinated with related dockets, including Project 24948, which addresses winback and retention offers by Chapter 58 Electing Companies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent by first class mail, by courier receipted delivery, or by facsimile transmission to the following representatives of Southwestern Bell Telephone Company on this the 18th day of October, 2002.

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